

WATER RIGHT APPLICATIONS AND RECORDS

2009 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions relating to a water right application and segregation of certain water right records.

Highlighted Provisions:

This bill:

- defines terms;
- requires the state engineer to extend the time in which to complete an application if the applicant meets certain requirements;
- clarifies the calculation of time for extension of an application;
- deletes redundant provisions relating to an extension of certain applications;
- deletes provisions relating to when a state engineer shall deny or approve an application;
- authorizes, and in some cases requires, the extension of time on a water right application held by a public water supplier or a wholesale electrical cooperative;
- authorizes the segregation of a water right or an application;
- deletes the requirement to deny segregation for certain reasons;
- authorizes the consolidation of a water right or application; and
- makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

73-3-12, as last amended by Laws of Utah 2008, Chapters 52 and 311

73-3-27, as last amended by Laws of Utah 2001, Chapter 136

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section **73-3-12** is amended to read:

35 **73-3-12. Time limit on construction and application to beneficial use --**

36 **Extensions -- Procedures and criteria.**

37 (1) As used in this section:

38 (a) [~~"Public agency" means:~~] "Public water supplier" is as defined in Section 73-1-4.

39 [~~(i) a public water supply agency of the state or a political subdivision of the state; or~~]

40 [~~(ii) the Bureau of Reclamation;~~]

41 (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.

42 (2) (a) [~~An~~] Within the time set by the state engineer under Subsection 73-3-10(5), an
43 applicant shall:

44 (i) construct works, if necessary[~~, and~~];

45 (ii) apply the water to beneficial use [~~within the time fixed by the state engineer.~~]; and

46 (iii) file proof with the state engineer in accordance with Section 73-3-16.

47 (b) Except as provided by Subsection [~~(2)(c)~~] (4), the state engineer [~~may grant an~~
48 ~~extension of time, not exceeding 50 years from the application's approval date, if~~] shall extend
49 the time in which an applicant shall comply with Subsection (2)(a) if:

50 (i) the date set by the state engineer is not after 50 years from the day on which the
51 application is approved; and

52 (ii) the applicant shows [~~diligence or~~];

53 (A) reasonable and due diligence in completing the appropriation; or

54 (B) a reasonable cause for delay in completing the appropriation.

55 [~~(c) The state engineer may grant an extension of time, beyond 50 years, on an~~
56 ~~application held by a public agency or a wholesale electrical cooperative if the public agency or~~
57 ~~wholesale electrical cooperative shows that the water will be needed to meet the reasonable~~
58 ~~future water or electricity requirements of the public.~~]

59 [~~(d)~~] (c) An applicant shall file a request for an extension of time with the [~~office of~~
60 ~~the~~] state engineer on or before the date [~~fixed~~] set for filing proof [~~of appropriation~~].

61 [~~(e)~~] (d) The state engineer may grant an extension of time authorized by Subsection
62 (2)(b) if the state engineer sets a date:

63 (i) not exceeding 14 years after the approval date upon a sufficient showing; and]

64 ~~[(ii) beyond 14 years after application and publication of notice:]~~

65 (i) no later than 14 years from the day on which the application is approved if the
66 applicant meets the requirements of Subsection (2)(b); and

67 (ii) after 14 years from the day on which the application is approved if:

68 (A) the applicant meets the requirements of Subsection (2)(b); and

69 (B) the state engineer publishes notice as provided in Subsection (2)(e).

70 ~~[(f)]~~ (e) (i) The state engineer shall publish a notice of the ~~[application]~~ request for an
71 extension of time once a week for two successive weeks, in a newspaper of general circulation,
72 in the county:

73 (A) in which the water [supply] source is located; and

74 (B) where the water [is to] will be used.

75 (ii) The notice shall:

76 (A) state that ~~[an application]~~ a request for an extension of time has been made; and

77 (B) specify where ~~[the]~~ an interested party may obtain additional information relating
78 to the ~~[application]~~ request.

79 ~~[(g) Any]~~ (f) A person who owns a water right or holds an application from the water
80 source [of supply] referred to in Subsection (2)~~[(f)]~~(e) may file a protest with the state
81 engineer:

82 (i) within 20 days after the notice is published, if the adjudicative proceeding is
83 informal; and

84 (ii) within 30 days after the notice is published, if the adjudicative proceeding is
85 formal.

86 ~~[(h) In considering an application to extend the time in which to place water to~~
87 ~~beneficial use under an approved application, the state engineer shall deny the extension of~~
88 ~~time and declare the application lapsed, unless the applicant affirmatively shows that the~~
89 ~~applicant has exercised or is exercising reasonable and due diligence in working toward~~
90 ~~completion of the appropriation:]~~

91 ~~[(i) (i) The state engineer shall approve the extension of time if the applicant shows~~
92 ~~reasonable and due diligence:]~~

93 ~~[(ii)]~~ (g) The approved extension of time is effective so long as the applicant continues
94 to exercise reasonable and due diligence in completing the appropriation.

95 ~~[(j)-(i)]~~ (h) The state engineer shall consider the holding of an approved application by
96 a public ~~[agency]~~ water supplier or a wholesale electrical cooperative to meet the reasonable
97 future water or electricity requirements of the public to be reasonable and due diligence ~~[within~~
98 ~~the meaning]~~ in completing the appropriation for the purposes of this section for ~~[the first]~~ 50
99 years from the date on which the application is approved.

100 ~~[(ii)]~~ ~~The state engineer may approve an extension of time beyond 50 years for a public~~
101 ~~agency or a wholesale electrical cooperative, if the public agency or wholesale electrical~~
102 ~~cooperative provides information that shows the water will be needed to meet the reasonable~~
103 ~~future water or electricity requirements of the public.]~~

104 ~~[(k)]~~ (i) If the state engineer finds ~~[unjustified]~~ unreasonable delay or lack of
105 reasonable and due diligence in ~~[prosecuting the works to completion]~~ completing the
106 appropriation, the state engineer may:

107 (i) deny the extension of time; or

108 (ii) grant the request in part or upon conditions, including a reduction of the priority of
109 all or part of the application.

110 (3) ~~[(a)]~~ Except as provided by ~~[Subsections (3)(b) and (c)]~~ Subsection (4), an
111 application upon which proof has not been ~~[submitted]~~ filed shall lapse and have no further
112 force or effect after ~~[the expiration of]~~ 50 years from the date ~~[of its approval]~~ on which the
113 application is approved.

114 ~~[(b)]~~ (4) (a) If the works are constructed with which to make beneficial use of the water
115 applied for, the state engineer may, upon showing of that fact, ~~[grant additional]~~ extend the
116 time ~~[beyond the 50-year period]~~ in which to ~~[make]~~ file proof~~[:]~~ by setting a date after 50
117 years from the day on which the application is approved.

118 ~~[(c)]~~ ~~An application held by a public agency or a wholesale electrical cooperative to~~
119 ~~meet the reasonable future water or electricity requirements of the public, for which proof of~~
120 ~~appropriation has not been submitted, shall lapse, unless extended as provided in Subsection~~
121 ~~(2)(j):]~~

122 (b) (i) The state engineer may extend the time in which the applicant shall comply with
123 Subsection (2)(a) by setting a date after 50 years from the day on which the application is
124 approved if the applicant:

125 (A) is:

126 (I) a public water supplier; or

127 (II) a wholesale electrical cooperative; and

128 (B) the applicant provides information that shows the water applied for in the
129 application is needed to meet the reasonable future requirements of the public.

130 (ii) The information provided by a public water supplier shall be in accordance with the
131 criteria listed in 73-1-4(2)(f).

132 (c) The state engineer shall extend the time in which to file proof by setting a
133 reasonable date after 50 years from the day on which the application is approved if the
134 applicant:

135 (i) meets the requirements in Subsection (4)(b); and

136 (ii) has:

137 (A) constructed works to apply the water to beneficial use; or

138 (B) made substantial expenditures to construct the works.

139 Section 2. Section **73-3-27** is amended to read:

140 **73-3-27. Requests for segregation.**

141 (1) (a) Upon written request [in writing and approval by], the state engineer[;
142 applications to appropriate or to permanently change] shall segregate into two or more parts the
143 following in the state engineer's records:

144 (i) an application to:

145 (A) under Section 73-3-2, appropriate water;

146 (B) under Section 73-3-3, permanently change:

147 (I) the point of diversion[;];

148 (II) the place of water use; or

149 (III) the purpose of water use [of water may be divided or segregated into two or more
150 separate parts; provided such request shall be made upon forms]; and

151 (ii) a water right for which:

152 (A) the state engineer has issued a certificate according to Section 73-3-17;

153 (B) a court has entered a judgment according to Section 73-4-15; and

154 (C) a person has filed a claim according to Section 73-5-13.

155 (b) A person shall:

156 (i) submit the request authorized by Subsection (1)(a) on a form furnished by the state

157 engineer; and ~~[shall]~~
158 (ii) include:
159 (A) the ~~[serial]~~ water right number ~~[of the application]~~ to be segregated[;];
160 (B) the name[;] and post-office address of the owner of the application[;] or water
161 right;
162 (C) a statement of the nature of the proposed ~~[division or]~~ segregation[;];
163 (D) the reasons ~~[therefor, and such other information as the state engineer may require.~~
164 Action] for the proposed segregation; and
165 (E) other information the state engineer may require to accomplish the segregation.
166 (2) (a) An action taken by the state engineer on ~~[applications for appropriation or~~
167 ~~permanent change prior to]~~ an application or water right before segregation ~~[shall be]~~ is
168 applicable in all respects to the segregated parts ~~[thereof. Upon segregation the original and]~~ of
169 the application or water right.
170 (b) After the state engineer segregates the application or water right, each segregated
171 part ~~[shall be treated as separate applications. The approval of a request for segregation shall~~
172 ~~not]~~ is a separate application or water right in the state engineer's records.
173 (c) The segregation of an application or a water right in the state engineer's records
174 does not:
175 (i) confirm the validity or good standing of the segregated parts of the application or
176 water right; or
177 (ii) extend the time for the construction of works~~[-Action of the state engineer upon~~
178 ~~requests for segregation taken prior to the effective date of this act is approved and confirmed]~~
179 for an application.
180 ~~[Requests for segregation shall be rejected if the approval thereof would impair rights~~
181 ~~or would prove detrimental to the public welfare.]~~
182 (3) Upon written request, the state engineer may consolidate two or more applications
183 or water rights if the applications or water rights:
184 (a) are from the same source;
185 (b) have the same priority date; and
186 (c) are sufficiently consistent in definition that the consolidated application or water
187 right may be described without referring to the characteristics of the individual application or

188 water right that existed before consolidation.

Legislative Review Note
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Office of Legislative Research and General Counsel